

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

1  
2 Mar 13, 2023  
3  
4  
5

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

No. 2:22-CR-00105-SAB-1

Plaintiff,

ORDER DENYING  
DEFENDANT'S MOTION  
TO MODIFY CONDITIONS  
OF RELEASE

v.

JOSE PENA-LUNA,

**MOTION DENIED**  
**(ECF No. 27)**

Defendant.

Pending before the Court at **ECF No. 27** is Defendant JOSE PENA-LUNA's Motion to Modify Conditions of Release, specifically, Condition No. 18, requiring him to participate in GPS monitoring.

Specifically, Defendant moves to amend Condition No. 18 in the Order Following Detention Hearing on Indictment, ECF No. 19, requiring him to participate in GPS monitoring. Defendant claims the condition presents a financial burden on Defendant and his family. U.S. Probation does not object to the proposed modification and the United States defers to the Court.

The Court has reviewed Defendant's motion at **ECF No. 27** and continues to find the electronic monitoring condition is an important part of the combination of conditions that provide a reasonable assurance of both Defendant's appearance at future court proceedings and the safety of community. *See* 18 U.S.C. § 3142.

1 When the Court previously fashioned conditions of release, the Court took into  
2 account the nature and circumstances of the offense charged, the weight of the  
3 evidence against Defendant, as well as Defendant's history and characteristics,  
4 including character, physical and mental condition, family ties, employment,  
5 financial resources, length of residence in the community, community ties, past  
6 conduct and history relating to alcohol and drug abuse, and also criminal history,  
7 record concerning appearance at court proceedings, whether Defendant was under  
8 supervision at the time of the alleged offense, and the nature and seriousness of the  
9 danger to the community posed by Defendant's release. In the Court's continued  
10 view, the electronic location monitoring condition is an appropriate condition of  
11 release.

12 While Defendant has not had any serious issues while on pretrial release  
13 during the time the electronic monitoring condition has been in place, it does not  
14 then follow that the electronic monitoring condition is therefore now unnecessary  
15 or superfluous. First, Defendant has a poor history of complying with prior court  
16 requirements and directives as demonstrated by the four prior illegal  
17 reentry/removal cases reflected in the Supplement Pretrial Services Report. ECF  
18 No. 15 at 2-3. Second, Defendant also violated the terms of his supervised release  
19 in one of those prior cases by returning to the United States while still on  
20 supervised release. *Id.* at 3. Third, Defendant also has a history of arrests and a  
21 conviction for driving offenses involving alcohol. *Id.* Finally, Defendant also has  
22 failed to appear for prior proceedings on at least two occasions. *Id.* at 3-4. After  
23 again considering Defendant's prior record and prior compliance with court  
24 supervision, the Court continues to view the electronic location monitoring  
25 condition as an appropriate pretrial release condition that imposes a minimum and  
26 modest burden on Defendant while serving a necessary supervision function  
27 including deterrence.

The Court has also considered that the GPS monitoring condition evidently has cost Defendant \$737 since the Court released Defendant over the objection of the United States on September 12, 2022. ECF Nos. 19, 27. This is a cost of a little over \$100 a month (mid September 2022 through early March 2023). While not insignificant, it is not an unduly burdensome cost particularly given the countervailing concerns identified in this Order.

Accordingly, for the reasons stated in this Order, Defendant's Motion to Modify Conditions of Release, **ECF No. 27**, is **DENIED**.

## IT IS SO ORDERED.

DATED March 13, 2023.



James A. Goeke  
JAMES A. GOEKE  
UNITED STATES MAGISTRATE JUDGE